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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/176,634 10/22/98 TURI

M JWB-98-9-P

EXAMINER

QM32/0607

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SHANDSKI, P

ART UNIT

PAPER NUMBER

3761

DATE MAILED:

06/07/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/176,634

Applicant(s)

TURI ET AL.

Examiner

Paul A Shanoski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8, 10, 12, and 15 is/are rejected.
- 7) ☒ Claim(s) 4-6, 9, 11 and 16 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 14) ☒ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 17) ☒ Interview Summary (PTO-413) Paper No(s). 4.
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

- I. Figures 1-7.
- II. Figures 8-13.
- III. Figures 14-19.
- IV. Figures 20-24
- V. Figures 25-28.
- VI. Figures 29-32.
- VII. Figures 33-37.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with James Badie on March 17, 2000, a provisional election was made with traverse to prosecute the invention of Figures 20-24, claims 1-6, 8-13, and 15-16. Affirmation of this election must be made by applicant in replying to this Office action. Claims 7 and 14 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 1, 3, 8, 10, 12, 13, and 15 each recite the limitation "the wearer" in the portion of the claim which describes the fastening means. There is insufficient antecedent basis for this limitation in the claim. Applicant should change the word "the" to "a".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Dreier et al. (P.N. 5,601,543).

Dreier discloses an absorbent article containing an absorbent body having front and rear waist portions, a crotch portion, a pair of spaced apart leg openings, a means for fastening the article to the body of a wearer, and an elasticized barrier layer overlying a portion of the absorbent core which defines a retaining enclosure for body exudates, between the barrier layer and the absorbent core (Figure 1)

Regarding claims 2 and 4, see column 8, lines 21-34.

Regarding claim 3, see Fig. 1 and column 3, lines 58-61.

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Allowable Subject Matter

Claim 4-6, 9, 11, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Examiner cannot locate a reference containing an absorbent article having a plurality of barrier layers, arranged such that pockets are formed between the barrier segments.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dreier et al. (P.N. 5,601,543); Dreier (P.N. 5,558,660); Kitoka (P.N. 5,342,342); Igaue et al. (P.N. 5,304,160); Sherod et al. (P.N. 5,558,659); Tanji et al. (P.N. 5,429,632); Bruemmer et al. (P.N. 5,582,606); Roessler et al. (P.N. 5,613,959), and; Saisaka et al. (P.N. 5,624,424).

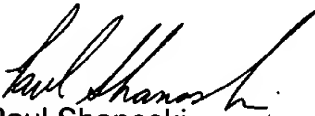
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Shanoski whose telephone number is (703) 305-0560. The examiner can normally be reached on M-F, 7:30-4.

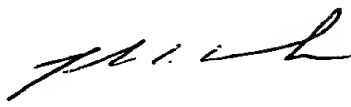
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone numbers

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for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for unofficial communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


Paul Shanowski
June 2, 2000


John G. Weiss
Supervisory Patent Examiner
Group 3700